

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs February 26, 2008

KELVIN WADE CLOYD v. HOWARD CARLTON, WARDEN

Appeal from the Criminal Court for Johnson County
No. 4938 Lynn W. Brown, Judge

No. E2006-02472-CCA-R3-HC - Filed July 21, 2008

Petitioner, Kelvin Wade Cloyd, appeals the trial court's dismissal of his petition for writ of habeas corpus in which he argued that his convictions for vehicular homicide were void because the Washington County Criminal Court failed to indicate the amount of pretrial jail credit on the judgment forms. We determine that the trial court properly dismissed the petition for writ of habeas corpus because Petitioner failed to state a colorable claim for relief. Therefore, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Kelvin Wade Cloyd, Pro Se, Mountain City, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; and Joe Crumley, District Attorney General, for the appellee, State of Tennessee.

OPINION

Petitioner was convicted of two counts of vehicular homicide and possession of a controlled substance in Washington County. As a result, he was sentenced as a Range II multiple offender to two concurrent sentences of eighteen years. Those sentences were ordered to be served consecutively to another sentence in an unrelated case. Petitioner challenged the sufficiency of the evidence on direct appeal. *See State v. Kelvin Wade Cloyd*, No. 03C01-9704-CR-00153, 1998 WL 151137 (Tenn. Crim. App., at Knoxville, Apr. 2, 1998), *perm. app. denied*, (Tenn. Dec. 14, 1998). The underlying facts indicated that on October 8, 1995, Petitioner was involved in a head-on collision with the victims, Paul Lehew and Charles Garland, who were killed instantly. Earlier that night, Petitioner and Randy Loyd were drinking beer and other mixed drinks at a bar and later at

dinner at a restaurant. After eating dinner, they returned to the bar. The victims were also at the bar. Petitioner left the bar and plowed head-on into the vehicle occupied by the victims. A plastic bag containing forty-two blue Valium tablets was found in Petitioner's pocket at the scene. Petitioner's blood-alcohol level when he was tested after the accident was .06, but could have been as high as .108 at the time of the accident. Petitioner also had a therapeutic level of diazepam or Valium in his system. Officers and aramedics at the scene testified that Petitioner seemed to be under the influence of something at the time of the accident. There was conflicting testimony at trial regarding the manner of the accident, but there was testimony that Petitioner was speeding at the time of the collision. *Id.* at *1-2.

Subsequently, Petitioner filed a petition for post-conviction relief in regard to his convictions for two counts of vehicular homicide and one count of possession of a controlled substance. *See Kelvin Wade Cloyd v. State*, No. E2003-00125-CCA-R3-PC, 2003 WL 22477866 (Tenn. Crim. App., at Knoxville, Nov. 3, 2003), *perm. app. denied*, (Tenn. Jan. 26, 2004). Petitioner asserted, among other things, that he was denied the effective assistance of counsel at trial and on appeal and that the State withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *Kelvin Wade Cloyd*, 2003 WL 22477866, at *1. This Court denied post-conviction relief. *Kelvin Wade Cloyd*, 2003 WL 22477866, at *18.

Petitioner filed a petition for habeas corpus relief on May 14, 2004. *See Kelvin Wade Cloyd v. State*, No. E2004-02283-CCA-R3-HC, 2005 WL 1330842 (Tenn. Crim. App., at Knoxville, June 6, 2005). In that petition, he challenged a 1994 conviction for cocaine possession and argued that his twelve-year sentence was void.¹ This Court determined that Petitioner was entitled to a hearing and remanded the matter for further proceedings in the trial court. *Id.* at *5. On appeal after remand, this Court determined that Petitioner was not entitled to habeas relief because his original judgment of conviction was not void. *See Kevin Wade Cloyd v. State*, No. E2006-01784-CCA-R3-HC, 2008 WL 1788058, at *2 (Tenn. Crim. App., at Knoxville, Apr. 21, 2008).

On June 3, 2004, Petitioner filed a petition for habeas corpus relief relating to his convictions for vehicular homicide and possession of a controlled substance. *Kelvin Wade Cloyd v. Howard Carlton, Warden*, No. E2004-02003-CCA-R3-HC, 2005 WL 562755 (Tenn. Crim. App., at Knoxville, Mar. 10, 2005). In that petition he alleged that he was denied the effective assistance of counsel, claimed that the State knowingly used false testimony during his trial, and asserted that he was erroneously assessed costs. *Id.* at *1. The trial court denied the requested relief on the basis that Petitioner failed to state a claim for relief. This Court determined that Petitioner was not entitled to habeas relief because the issues he raised, if true, would entitle Petitioner to post-conviction relief rather than habeas corpus relief. Thus, we affirmed the dismissal of the petition by the trial court. *Id.* at *2.

¹Petitioner was on probation for the cocaine conviction when he was arrested and charged with two counts of vehicular homicide and one count of possession of a controlled substance that eventually led to the petition for habeas corpus relief at issue herein.

On August 18, 2006, Petitioner filed the petition for writ of habeas corpus which is the subject of the appeal herein. In the petition, Petitioner argued that the trial court failed to give him credit for time spent in jail prior to his trial, conviction, and the imposition of his sentence for his convictions for vehicular homicide. The trial court dismissed the petition without a hearing. The trial court determined that nothing in the petition would support a finding that the conviction is void or that the sentence has expired. Further, the trial court determined that Petitioner must proceed under the Uniform Administrative Procedures Act to determine whether the Department of Correction is properly calculating his sentence and sentence reductions. Petitioner filed a motion to recall the order of dismissal which was denied by the trial court. This appeal followed.

Analysis

On appeal, Petitioner argues that the trial court improperly dismissed the petition for habeas corpus relief. Specifically, Petitioner contends that his sentences are void because the trial court failed to indicate on the judgment forms that he was to receive pretrial detention credit for 395 days of imprisonment. The State argues that the issue raised by Petitioner is not an appropriate matter for habeas corpus relief.

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 995 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d

619, 627 (Tenn. Crim. App. 1994), *superceded by statute as stated in State v. Steven S. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v. State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. A habeas corpus court “properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements.” *Summers*, 212 S.W.3d at 260; *See also Hickman*, 153 S.W.3d at 21.

Petitioner failed to state a colorable claim for habeas relief. Generally, a petition for a writ of habeas corpus is not the proper vehicle to address complaints relative to the calculation of sentencing credits and parole dates. Such complaints are handled through the Administrative Procedures Act. *See* T.C.A. §§ 4-5-101 to -325; *see also Carroll v. Raney*, 868 S.W.2d 721, 723 (Tenn. Crim. App. 1993); *Brigham v. Lack*, 755 S.W.2d 469, 471 (Tenn. Crim. App. 1988). There is no evidence that Petitioner, currently in the custody of the Department of Correction, has pursued this avenue of redress. Furthermore, any judicial review through the Administrative Procedures Act must be in the Chancery Court of Davidson County. T.C.A. § 4-5-322(b)(1); *Brigham*, 755 S.W.2d at 471. The trial court properly dismissed the petition for habeas corpus relief.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE